United States District Court
Southern District of Florida

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 04-21140-CIV-HUCK/TURNOFF

NISSIM CORP.,

Plaintiff,

vs.

CLEARPLAY, INC., MATTHEW JARMAN, LEE JARMAN, and WILLIAM AHO,

Defendants.
_____/

ORDER ON CLAIM CONSTRUCTION

THIS MATTER is before the Court on the issue of construction of the claim language of U.S. Patent No. 5,434,678 issued July 18, 1995 (the "'678 Patent"), U.S. Patent No. 5,589,945 issued December 31, 1996 (the "'945 Patent"), U.S. Patent No. 5,724,472 issued March 3, 1998 (the "'472 Patent"), U.S. Patent No. 5,913,013 issued June 15, 1999 (the "'013 Patent"), and U.S. Patent No. 6,067,401 issued May 23, 2000 (the "'401 Patent"), pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). The parties have submitted initial and response briefs, and the Court conducted a *Markman* hearing on February 22 and February 23, 2005. For the reasons stated in open court and below, the Court makes the following claim constructions.

I. *Means-Plus-Function Limitations*

As an initial matter, the parties dispute whether four terms – "buffering means," "memory means," "random accessing means," and "random access and buffering means" – are means-plus-function limitations to be construed pursuant to 35 U.S.C. § 112, ¶ 6:

An element in a claim for a combination may be expressed as a means or step for

> performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. § 112, ¶ 6 (2000).

"[T]he use of the word 'means' creates a presumption that § 112, ¶ 6 applies." *Personalized Media Communications, LLC v. International Trade Comm'n*, 161 F.3d 696, 703 (Fed. Cir. 1998). "This presumption collapses, however, if the claim itself recites sufficient structure, material, or acts to perform the claimed function." *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1257 (Fed. Cir. 1999). *See also Sage Products, Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1428 (Fed. Cir. 1997) (§ 112, ¶ 6 does not apply if patentee "elaborate[s] sufficient structure . . . within the claim itself to perform entirely the recited function"). A claim term recites sufficient structure if the "term, as the name for structure, has a reasonably well understood meaning in the art." *Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580, 1583 (Fed. Cir. 1996). *See also Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1348 (Fed. Cir. 2002) ("the word 'means' in these limitations may be ignored" if "limitations recite precise structure well understood by those of skill in the art").

The term "means" appears in each of these four limitations, thereby invoking the presumption that § 112, ¶ 6 applies. Plaintiff argues that that presumption is rebutted because the claims denote "sufficient structure" solely from the plain meaning of the words preceding "means." Specifically, Plaintiff invokes the following dictionary definitions: "memory" as "any apparatus in which data may be stored;" "buffer" as "a synchronizing element used between two different forms of storage in a computer;" and "random access" as "a process in which data are accessed in nonsequential order and possibly at irregular intervals of time." Plaintiff's Initial Brief

at 25, 38, 48. Plaintiff provides no extrinsic evidence of how those terms are otherwise understood by those of skill in the art. Plaintiff's expert, Robert L. Stevenson, Ph.D., offers no opinion on the meaning of "memory" or "buffer." As for "random access," Dr. Stevenson merely reiterates the dictionary definition "as broadly referring to various random access devices capable of having data or information selectively retrieved in a non-selective manner." Declaration of Robert L. Stevenson ¶¶ 31, 32, 70 (Plaintiff's Response Brief Exh. 14).

The Court finds that these generally defined words do not recite "sufficiently definite structure to avoid the ambit of § 112, ¶ 6." *Personalized Media Communications*, 161 F.3d at 704. These words largely connote the function to be performed as opposed to the structure necessary to perform that function. *See Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1213 (Fed. Cir. 1998) (§ 112, ¶ 6 applies where "[t]he limitation is drafted as a function to be performed rather than definite structure or materials"); *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1536 (Fed. Cir. 1991) (§ 112, ¶ 6 applies where "the structural description in the joining means clause merely serves to further specify the function of that means. The recited structure tells only what the means-for-joining *does*, not what it *is* structurally.") (emphases in original). Even if any structure is suggested, these limitations describe at most an undefined and sweeping set of possible structures. *See Unidynamics Corp. v. Automatic Products Int'l, Ltd.*, 157 F.3d 1311, 1319 (Fed. Cir. 1998) (§ 112, ¶ 6 applies to "spring means tending to keep the door closed" where "spring is the only recitation of structure with the remainder pertaining solely to the function of the means limitation"); *Sage Products*, 126 F.3d at 1428 (§ 112, ¶ 6 applies to "closure means . . . for controlling access" because the claim did not "explicitly recite[ ] the structure, material, or acts needed to perform [the function]"). The Federal Circuit found § 112,

¶ 6 applicable in such circumstances:

> [T]he claimed "lever moving element" is described in terms of its function not its mechanical structure. If we accepted [patentee]'s argument that we should not apply section 112, ¶ 6, a "moving element" could be any device that can cause the lever to move. [Patentee]'s claim, however, cannot be construed so broadly to cover every conceivable way or means to perform the function of moving a lever, and there is no structure recited in the limitation that would save it from application of section 112, ¶ 6.

Mas-Hamilton Group, 156 F.3d at 1214. Similarly, the Court rejects Plaintiff's contention that the presumption is rebutted here, and concludes that § 112, ¶ 6 applies to these four claim limitations, as it does to all others containing the word "means."

The first step in construing a means-plus-function limitation is to identify the function "from the claim language itself." *Creo Products, Inc. v. Presstek, Inc.*, 305 F.3d 1337, 1344 (Fed. Cir. 2002). The second step is to identify the "corresponding structure, material, or acts described in the specification" necessary to perform that function. *Id.* As stated in open court, at this juncture the Court shall undertake only the first step of identifying the function of each means-plus-function limitation. The Court shall identify the corresponding structure after supplemental briefing by the parties and a subsequent hearing on that issue.

II. ***Disputed Claim Terms in the '678, '945, '401, and '013 Patents***

Buffering means

The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as "buffering at least a portion of a video."

Communications means

The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as "downloading segment information for a

video comprising a linear sequence of frames readable from a spiral track of an optical disc."

Content

The Court construes the term "content" as "the subject matter (as opposed to the story line) of a video, such as the form of expression."

Continuous

The Court construes the term "continuous" as "playing one segment of a video followed by the playing of another segment in an uninterrupted sequence."

Coordinating means

The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as "coordinating a retrieving means and a buffering means to retrieve the selected video segments and to seamlessly skip a retrieval of a non-selected video segment of a video producing a version of said video differing in length from the length of said video."

Descriptive structure

The Court construes the term "descriptive structure" as "a structure or arrangement of words, terms, codes, phrases, or designations describing or categorizing a video or a portion of a video."

Directly defining

The Court construes the term "directly defining" as "identifying a beginning and ending of a video segment, without requiring a person setting video content preferences to preview the entire video to identify the segment."

Downloading

The Court construes the term "downloading" as "transferring or copying data from an external source to another location."

Laser readable disc

The Court construes the term "laser readable disc" as "a disc readable by a laser."

Memory means

The term "memory means" appears with variation in multiple claims. The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as follows:

For purposes of Claims 1 and 8 of the '678 Patent and Claim 8 of the '945 Patent, the Court identifies the function as "storing a video segment map and a video."[1]

For purposes of Claims 4 and 9 of the '678 Patent, the Court identifies the function as "storing a video segment map or a video."

Overlapping video segment

The Court construes the term "overlapping video segment" as "a video segment containing different content categories at two or more descriptive levels (*e.g.*, graphic violence and explicit bloodshed)."

Parallel video segment

The Court construes the term "parallel video segment" as "a video segment containing alternative content to that of a corresponding video segment."

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[1] "Memory means" similarly appears in Claim 5 of the '678 Patent, which is currently not at issue per Plaintiff's Notice of Claims at Issue filed on February 25, 2005.

Preferencing means

The term "preferencing means" appears with variation in multiple claims. The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as follows:

For purposes of Claims 1, 4, 8, 10, 13, and 15 of the '678 Patent, the Court identifies the function as "establishing video content preferences responsive to at least one content category of possibly unsuitable content, with at least one content category including a violence category."[2]

For purposes of Claim 16 of the '678 Patent, the Court identifies the function as "establishing video content preferences responsive to a preestablished segment descriptive structure including a violence category."[3]

For purposes of Claim 1 of the '401 Patent, the Court identifies the function as "preestablishing a content preference with respect to a level of explicitness in each of plurality of content categories."

For purposes of Claim 6 of the '401 Patent, the Court identifies the function as "preestablishing a content preference responsive to a rating system."

For purposes of Claims 9 and 11 of the '945 Patent, the Court identifies the function as "establishing video content preferences."

Processing means

The Court identifies the function of this means-plus-function limitation per the claim

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[2] "Preferencing means" similarly appears in Claims 7 and 11 of the '678 Patent, which are currently not at issue per Plaintiff's Notice of Claims at Issue filed on February 25, 2005.

[3] "Preferencing means" similarly appears in Claim 5 of the '678 Patent, which is currently not at issue per Plaintiff's Notice of Claims at Issue filed on February 25, 2005.

language (with individual terms as construed herein) as "automatically selecting video segments from a plurality of video segments of a video responsive to an application of a video content preferences to a video segment map."

Random accessing means

The term "random accessing means" appears with variation in multiple claims. The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as follows:

For purposes of Claims 1 and 4 of the '678 Patent, the Court identifies the function as "retrieving the selected video segments."

For purposes of Claims 8, 10, 15 and 16 of the '678 Patent, the Court identifies the function as "retrieving a video segment map and seamlessly retrieving the selected video segments."

For purposes of Claim 13 of the '678 Patent, the Court identifies the function as "retrieving a video segment map and retrieving the selected video segments."

Random access and buffering means

The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as "playing from within the linear sequence of frames a seamless version of the video less in length than the length of the video, the playing not requiring an alternative video source and comprising retrieving the selected segments and seamlessly skipping a retrieval of an at least one segment by buffering at least a portion of a segment."

Retrieving means

The term "retrieving means" appears with variation in multiple claims. The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as follows:

For purposes of Claim 5 of the '945 Patent, the Court identifies the function as "retrieving video segments."

For purposes of Claims 8 of the '945 Patent, the Court identifies the function as "retrieving the selected video segments."

For purposes of Claim 11 of the '945 Patent, the Court identifies the function as "retrieving a video segment map and retrieving video segments of a video."

Seamless

The Court construes the term "seamless" as "without gaps perceptible to the human eye, achieved by maintaining a constant video transmission rate."

Seamless accessing means

The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as "seamlessly retrieving the selected video segments."

Segment information

The Court construes the term "segment information" as "a beginning and ending of a segment or a content descriptor[4] for the segment."

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[4] The term "descriptor" in these'678, '945, '401, and '013 Patent claim constructions shall have the same meaning as it is construed *infra* as a disputed claim term in the '472 Patent.

Segment map

The Court construes "segment map" as "a combination, arrangement, table, or listing of segment information identifying a beginning and ending of one or more segments, and a descriptor associated with a segment or a sequence of segments."

Selecting means

The term "selecting means" appears with variation in multiple claims. The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as follows:

For purposes of Claim 8 of the '945 Patent, the Court identifies the function as "selecting video segments from a plurality of video segments responsive to a video segment map."

For purposes of Claims 1 and 6 of the '401 Patent, the Court identifies the function as "selecting segments of the video by applying the preestablished content preference to the segment information."

Transitional video segment

The Court construes the term "transitional video segment" as "a video segment that facilitates the transparent transition from one video segment to another video segment."

Transmitting means

The term "transmitting means" appears with variation in multiple claims. The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as follows:

For purposes of Claims 1, 4, 13, and 18 of the '678 Patent, the Court identifies the function as "transmitting the retrieved video segments as a continuous video."

For purposes of Claims 8, 10, 15, 16, and 19 of the '678 Patent, the Court identifies the function as "transmitting the retrieved video segments as a seamless video."

Video/video program

The Court construes the terms "video" and "video program" as "any video image regardless of the source, motion, or technology implemented, comprising images found in full motion picture programs and films, in interactive electronic games, and in video produced by multi-media systems." The terms "video" and "video program" are interchangeable.

Video segment

The Court construes the term "video segment" as "a number of video frames."

III. *Disputed Claim Terms in the '472 Patent*

Defining and linking means

The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as "defining and linking a plurality of segments of a video responsive to a preestablished content rating."

Descriptor

The Court construes the term "descriptor" as "a word, term, code, phrase, or designation to describe or categorize a video or a portion of a video."

Descriptor means

The Court identifies the function of this means-plus-function limitation per the claim language (with individual terms as construed herein) as "describing the contents of an at least one of a plurality of segments responsive to a preestablished content rating."

Labeling means

The Court identifies the function of this means-plus-function term per the claim language (with individual terms as construed herein) as "labeling a content map."

Segment definition

The Court construes the term "segment definition" as "an identification of a beginning and an ending of a segment."

Video segment

The Court construes the term "video segment" in the '472 Patent as in the '678 Patent – that is, as "a number of video frames."

DONE AND ORDERED in Chambers, Miami, Florida, this 4th day of March, 2005.

Paul C. Huck
United States District Judge

Copies furnished to:
Counsel of Record